

JMM:LTG

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

12-0528M

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UNITED STATES OF AMERICA

TO BE FILED UNDER SEAL

- against -

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR AN
ARREST AND SEARCH WARRANT

ERIC JACOBSON,

(21 U.S.C. § 846)

DEFENDANT.

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UNITED STATES OF AMERICA

- against -

THE PREMISES KNOWN AND DESCRIBED AS
THE MEDICAL OFFICE OF DR. ERIC
JACOBSON LOCATED AT SUITE 309 IN THE
NORTHWEST CORNER OF THE THIRD-FLOOR
OF AN OFFICE BUILDING LOCATED AT 277
NORTHERN BOULEVARD, GREAT NECK, NEW
YORK.

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EASTERN DISTRICT OF NEW YORK, SS:

GERARD J. RICCIARDI, being duly sworn, deposes and says
that he is a Special Agent with the Internal Revenue Service
("IRS") assigned to the Drug Enforcement Administration Task
Force ("DEA"), duly appointed and acting as such.

In or about and between December 2011 and the present,
both dates being approximate and inclusive, within the Eastern
District of New York and elsewhere, the defendant ERIC JACOBSON,
together with others, did knowingly and intentionally conspire to

distribute a controlled substance, which offense involved a substance containing oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

(Title 21, United States Code, Section 846)

Upon information and belief, there is probable cause to believe that there is kept and concealed within THE PREMISES KNOWN AND DESCRIBED AS THE MEDICAL OFFICE OF DR. ERIC JACOBSON LOCATED AT SUITE 309 IN THE NORTHWEST CORNER OF THE THIRD-FLOOR OF AN OFFICE BUILDING LOCATED AT 277 NORTHERN BOULEVARD, GREAT NECK, NEW YORK (the "SUBJECT OFFICE"), the items described in Attachment A to this affidavit, all of which constitute evidence, fruits or instrumentalities of violations of Title 21, United States Code, Section 846.

The source of my information and the grounds for my belief are as follows:¹

1. I have been a Special Agent with the IRS for 21 years and assigned to the DEA task force for approximately 5 years. I am currently assigned to the Long Island District Office. During my tenure with the DEA, I have participated in numerous narcotics investigations, including investigations of the diversion of legally manufactured controlled substances into

¹ Because the purpose of this Affidavit is to set forth only those facts necessary to establish probable cause to arrest and probable cause to search, I have not set forth all of the facts and circumstances of which I am aware.

the illicit market. I have had experience investigating cases in which Schedule II controlled substances have been purchased from complicit doctors and used by abusers of those substances and sold or traded to other abusers.

2. I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents, my training and experience, and discussions I have had with other law enforcement personnel concerning the investigation described herein. Additionally, statements attributable to individuals herein are set forth in sum and substance and in part.

INTRODUCTION

3. Among other duties I am participating in an investigation of the defendant ERIC JACOBSON, a medical doctor who specializes in pain management, based upon improper prescriptions of oxycodone, a Schedule II controlled substance, in exchange for cash payments.

4. This affidavit is in support of an application for the arrest of the defendant JACOBSON and to search the SUBJECT OFFICE. For the reasons set forth below, I believe there is probable cause to arrest the defendant and probable cause to believe that records and other information are contained within the SUBJECT OFFICE that is evidence, fruits or instrumentalities of violations of Title 21, United States Code, Section 846. The items to be searched for and seized are specifically described in

Attachment A to this affidavit which is incorporated herein.

THE SUBJECT OFFICE

5. The SUBJECT OFFICE is a medical business located in Suite 309, located in the Northwest corner of the third-floor of an office building located at 277 Northern Boulevard, Great Neck, New York. The entrance to this suite is a wood door on the third floor to the left of a metal sign which reads "309" and "Eric Jacobson, M.D." Inside the entrance door to the suite is a reception area and behind the reception area are offices.

Photographs of the SUBJECT OFFICE are attached as Attachment B.

THE DISTRIBUTION OF CONTROLLED SUBSTANCES GENERALLY

6. The Controlled Substances Act, 21 U.S.C. §§ 801 et seq., and regulations promulgated thereunder classify controlled substances in five schedules. Schedule I drugs, including, for example, heroin and LSD, do not have an acceptable medical use in the United States. Schedule II through Schedule V drugs have acceptable medical uses. The medical use of substances in Schedule II, including, for example, oxycodone (see below), is severely restricted because such drugs have a high abuse potential. Substances in Schedule III, including, for example, Vicodin, have an abuse potential less than those in Schedule II, but more than Schedule IV controlled substances, and so forth. Schedule V drugs consist primarily of preparations containing limited quantities of certain narcotics and stimulant drugs.

7. Pursuant to 21 C.F.R. § 1306.21(a), a controlled

substance listed in Schedules III, IV or V that is a prescription drug as determined under the Food, Drug & Cosmetics Act, 21 U.S.C. §§ 301, et seq., may be dispensed only if prescribed by an authorized practitioner.

8. 21 C.F.R. § 1306.04 sets forth the purpose of the issuance of a prescription. It says, in pertinent part, in order for "[a] prescription for a controlled substance to be effective, [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances."

9. Oxycodone hydrochloride ("oxycodone"), a Schedule II narcotic drug, is an synthetic opioid analgesic medication generally prescribed for the relief of moderate to severe pain. Oxycodone is currently available in time-release oral pill formulation, in strengths from 10 to 160 milligrams. Oxycodone

has a high potential for abuse. Drug abusers crush the protective coating on the pill and, snort, ingest or inject it, thereby obtaining all twelve hours of the drug at one time. Oxycodone used in this fashion produces a heroin-like euphoria. Oxycodone is a highly addictive drug.

BACKGROUND OF THE INVESTIGATION

10. I have been involved in numerous investigations involving a practice known as "doctor shopping." In a typical doctor shopping scheme, an individual visits more than one doctor and obtains multiple prescriptions for a controlled substance such as oxycodone generally for two purposes, either to obtain the controlled substance to later resell, or because the individual is dependant on the controlled substance and intends to ingest more than the authorized dosage, or both. In the case of complicit doctors, the individual may be prescribed medication despite awareness by the doctor that the patient is also receiving controlled substance prescriptions from other doctors and drug testing indicating that the patient is not even using the controlled substances prescribed, i.e., the patient is reselling the pills or the patient has evidence of other illegal substances in his system, demonstrating that the patient does not have a pain management issue but an dependence/addiction problem. The individual will then have the prescriptions filled at numerous different pharmacies, some of which may be complicit as well, so as to avoid detection. In addition, the individual may

pay cash to have the prescription filled so as to avoid detection by an insurance company.

11. In the Summer of 2011, the DEA began an investigation into the defendant's pain management practices as it was determined that he was one of the largest prescribers of oxycodone pills in New York State.

12. Thereafter, agents interviewed confidential sources, including an office manager, physician's assistant and psychologist who worked for the defendant at the SUBJECT OFFICE, each of whom left the defendant's employment after coming to the realization that in exchange for cash, Jacobson was knowingly prescribing large volumes of oxycodone pills to drug abusers and/or persons who are selling, rather than taking the medication.

13. Based in part upon the information provided by the confidential sources, on November 30, 2011, the Honorable Arlene R. Lindsay authorized a search of the SUBJECT OFFICE upon an application by the DEA.² On December 1, 2011, the DEA executed the search warrant. Patient records were seized and the defendant JACOBSON agreed to relinquish his DEA registration number which legally divested the defendant of his authority as a health care practitioner to dispense controlled substances, including oxycodone, for medically-accepted reasons in the usual

² This affidavit in support of that search warrant is attached hereto and incorporated herein by reference.

course of his practice.

14. Since December 1, 2011, the defendant JACOBSON continued to operate his pain management practice from the SUBJECT OFFICE. However, as approximately 90% of the defendant's patients were regularly prescribed oxycodone, and the defendant was no longer able to prescribe oxycodone, on December 17, 2011, the defendant hired John Doe, a licensed physician with an active DEA registration number, who was permitted to prescribe controlled substances to the defendant's patients. Thereafter, in March 2012, the defendant JACOBSON hired a nurse practitioner, who was also permitted to prescribe controlled substances to the defendant's patients pursuant to her own active DEA registration number.

15. After December 1, 2011, the defendant JACOBSON increased his rates and began charging his pain management patients \$450 for an initial visit, \$250 for every follow-up visit and \$500 to replace a lost or missing prescription. Defendant Jacobson described this increase in fees as necessary "to cover his litigation costs." The defendant JACOBSON continued to only accept cash payments from his pain management patients.

PROBABLE CAUSE TO SEARCH THE SUBJECT OFFICE AND TO BELIEVE THAT THE DEFENDANT IS ENGAGING IN THE ILLEGAL DISTRIBUTION OF OXYCODONE

16. John Doe, a medical doctor working for the defendant JACOBSON from December 2011 to the present, advised that he was hired by the defendant on December 17, 2011 and paid

\$25,000 a month to examine the defendant's pain management patients and prescribe oxycodone.³ John Doe described 10% of the defendant's patients as "drug dealers" whose express purpose in coming to the defendant's office was to obtain prescriptions for oxycodone so that the pills could be resold for a profit. John Doe described an additional 25% of the defendant's patients as being improperly referred to the defendant by a "friend," not by a medical professional, and advised that many of these patients were doctor shoppers who were only interested in obtaining as much oxycodone as possible to sell, to take or both.

17. John Doe advised that between December 2011 and March 2012 he discharged between 20% and 30% of the defendant's patients and wanted to discharge additional patients however the defendant would not allow this to occur. In fact, John Doe advised that when he discharged patients, the defendant sometimes became argumentative and often disagreed with John Doe's assessment of the rationale for the patient's discharge (i.e. other drug use, doctor shopping, mental health issues or high risk of diversion).

18. John Doe further stated that he has confronted the defendant JACOBSON on numerous occasions about what he described as the defendant's inappropriate or bad patients - those who were

³ Agents have interviewed John Doe and have determined that he is a reliable source of information in that the information he has provided to law enforcement officials has been corroborated by ongoing independent investigation, including prescription records and surveillance by agents.

diverting oxycodone or those whose oxycodone dependence greatly overshadowed any medical condition that might require pain management, or those who were dependant on other controlled substances such as heroin or cocaine. John Doe advised that the defendant stated in sum and substance that he, JACOBSON, did not know why he found it so difficult to confront and discharge these patients. Defendant JACOBSON further stated that he has known some of these patients for years and that they "need his help." John Doe advised that he believes that the defendant refuses to discharge patients because of greed.

19. John Doe also advised that he has seen at least two of the defendant's patients who claim to need oxycodone for back pain carrying a large refrigerator up to the SUBJECT OFFICE for defendant JACOBSON and that each was thereafter prescribed oxycodone at JACOBSON'S direction.

20. John Doe further advised that upon joining the practice, he immediately identified a group of patients that lived in Ocean County, New Jersey as inappropriate or bad patients. John Doe said it was obvious to him that many of these New Jersey patients were diverting their pills and that it should have been obvious to the defendant JACOBSON. John Doe discharged many of the New Jersey patients as a result. John Doe then suggested that the office institute a rule that patients live within 50 miles of the office to combat these types of patients. The defendant refused to institute the rule.

21. In one particular instance, John Doe confronted the defendant about a patient that was regularly prescribed oxycodone. John Doe discovered that the patient had crushed a pill and put it into his (the patient's) urine in order to test positive for oxycodone when administered a drug test by the office staff. John Doe advised that, in his experience, pill diverters often engage in this conduct to attempt to prove that they are taking the medication when in fact they are not. When John Doe told the defendant about this patient, instead of agreeing that the patient should be discharged, the defendant mocked John Doe and said "you should be a detective not a doctor."

22. After John Doe discharged a substantial number of the defendant's patients, John Doe learned that the defendant JACOBSON, or someone acting at his direction, contacted these patients and invited them back to the practice to see a nurse practitioner that the defendant hired, who has the authority to write prescriptions. The defendant cut John Doe's work schedule from five days a week to four days a week and then ultimately to three days a week, while scheduling the nurse practitioner to work the other two days, insuring that the two never worked on the same day. The nurse practitioner saw some of John Doe's discharged patients, amongst other patients, and began to prescribe oxycodone to those patients at the defendant JACOBSON'S direction.

23. A number of these discharged patients, which the defendant invited back to see the nurse practitioner, were discharged because John Doe believed that they were either diverting their pills or at risk for diverting their pills, had mental health issues which made them inappropriate candidates for oxycodone use, or were suffering from severe opiate dependency and required detoxification and substance abuse treatment, not more oxycodone.

24. John Doe advised that when he discharged patients he regularly wrote a note to include in the patient's file explaining the discharge which the nurse practitioner would be required to review before prescribing more oxycodone to these patients.

25. John Doe believes that in accepting back these discharged patients and continuing to prescribe oxycodone to them, the defendant has acted outside the usual course of professional practice.

26. According to John Doe, Jacobson works at the SUBJECT OFFICE in Great Neck three days a week and utilizes three different computers to write prescriptions. Moreover, all of John Doe's discharged patient files remain at the SUBJECT OFFICE.

27. Seizure of the current patient files will reveal evidence that the defendant JACOBSON is knowingly distributing oxycodone without a legitimate medical purpose.

PROCEDURE FOR PHOTOCOPYING AND RETURNING PATIENT FILES

28. It is the government's intention to implement the following procedures with regard to any medical records seized during the course of the execution of the requested search warrant. Every attempt will be made to photocopy or digitally scan any seized medical records within thirty days of the seizure (if this turns out to be impractical, we will notify the Court and seek an extension of time). After the files are copied or digitally scanned, copies of the medical records will be provided to the defendant JACOBSON. Should an individual patient need access to a medical file during the copying period, the patient may contact a member of the investigative team during business hours. Upon the submission of a valid patient release form to a member of the investigative team, the patient will be provided a copy of the medical file within 72 hours. In the event of an emergency, the treating facility or physician may contact a member of the investigative team to obtain a copy of the patient's medical file as soon as practicable. At the execution of the search warrant, agents will post a notice on the door of the SUBJECT OFFICE that will allow patients to contact members of the investigative team regarding patient files.

SPECIFICS REGARDING THE SEIZURE AND SEARCHING OF COMPUTER SYSTEMS

29. Based on my own experience and consultation with other law enforcement agents and detectives who have been involved in the search of computers and retrieval of data from

computer systems and related peripherals, and computer media, there are several reasons why a complete search and seizure of information from computers often requires seizure of all electronic storage devices, as well as all related peripherals, to permit a thorough search later by qualified computer experts in a laboratory or other controlled environment:

a. Computer storage devices, such as hard disks, diskettes, tapes, laser disks, and other digital storage mediums, can store the equivalent of hundreds of thousands of pages of information. Additionally, when an individual seeks to conceal information that may constitute criminal evidence, that individual may store the information in random order with deceptive file names. As a result, it may be necessary for law enforcement authorities performing a search to examine all the stored data to determine which particular files are evidence or instrumentalities of criminal activity. This review and sorting process can take weeks or months, depending on the volume of data stored, and would be impossible to complete during a search on site; and

b. Searching computer systems for criminal evidence is a highly technical process, requiring expert skill and a properly controlled environment. The vast array of computer hardware and software available requires even those who are computer experts to specialize in some systems and applications. It is difficult to know before a search what type

of hardware and software are present and therefore which experts will be required to analyze the subject system and its data. In any event, data search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password-protected, or encrypted files. Since computer evidence is extremely vulnerable to inadvertent or intentional modification or destruction (both from external sources or from destructive code imbedded in the system as a booby trap), a controlled environment is essential to its complete and accurate analysis.

30. Based on my own experience and my consultation with other law enforcement agents and detectives who have been involved in computer searches, searching computerized information for evidence or instrumentalities of a crime often requires the seizure of all of a computer system's input and output peripheral devices, related software, documentation, and data security devices (including passwords) so that a qualified computer expert can accurately retrieve the system's data in a laboratory or other controlled environment. There are several reasons that compel this conclusion:

a. The peripheral devices that allow users to enter or retrieve data from the storage devices vary widely in their compatibility with other hardware and software. Many system storage devices require particular input/output devices in order to read the data on the system. It is important that the

analyst be able to properly re-configure the system as it now operates in order to accurately retrieve the evidence listed above. In addition, the analyst needs the relevant system software (operating systems, interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media), as well as all related instruction manuals or other documentation and data security devices; and

b. In order to fully retrieve data from a computer system, the analyst also needs all magnetic storage devices, as well as the central processing unit ("CPU"). In cases like the instant one where the evidence consists partly of image files, the monitor and printer are also essential to show the nature and quality of the graphic images which the system could produce. Further, the analyst again needs all the system software (operating systems or interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media) for proper data retrieval.

c. I am familiar with and understand the implications of the Privacy Protection Act ("PPA"), 42 U.S.C. § 2000aa, and the role of this statute in protecting First Amendment activities. I am not aware that any of the materials to be searched and seized from the SUBJECT OFFICE are protected materials pursuant to the PPA. If any such protected materials

are inadvertently seized, all efforts will be made to return these materials to their authors as quickly as possible.

31. In addition to being evidence of a crime, in cases of this sort, there is probable cause to believe that the computer and its storage devices, modem, router, and other system components were used as a means of committing offense and should be seized on that basis alone. Accordingly, permission is sought herein to seize and search all computers and all related devices consistent with the scope of the requested search, as set forth in Attachments A and B, respectively.

32. It is the government's intention to implement a procedure for data seized from digital and computer media. Every attempt will be made to copy the data from any hard drives and digital media seized within thirty days of the seizure (if impractical, we will notify the Court and seek additional time). After the data is copied and verified, a copy will be provided to JACOBSON. Unlike physical records, however, digital data cannot be provided until it has been copied, without altering the original data. At the execution of the search warrant, agents will provide a telephone number to JACOBSON to contact members of the investigative team regarding securing a copy of seized digital data.


REQUEST TO SEARCH

33. Based upon the facts set forth above, there is probable cause to believe that the items listed on Attachment A


hereto, which is incorporated herein by reference, will be found at the SUBJECT OFFICE, and that those items constitute evidence, fruits or instrumentalities of violations of Title 21, United States Code, Section 846.

WHEREFORE, your affiant respectfully requests that a warrant be issued authorizing DEA agents, with such other assistance as may be necessary, to search the SUBJECT OFFICE and seize the items listed in Attachment A to this affidavit, which is incorporated by reference as if fully set forth herein, all of which constitute evidence, fruits or instrumentalities of violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Section 846.

WHEREFORE your affiant respectfully requests that a warrant be issued for the defendant ERIC JACOBSON so that he may be dealt with according to law.


Special Agent Gerard J. Ricciardi
IRS/DEA

Sworn to before me this
4th day of June, 2012


THE HONORABLE WILLIAM D. WALL
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

ATTACHMENT A

ITEMS TO BE SEIZED - THE SUBJECT OFFICE

1. Any and all records, data and correspondence constituting evidence, fruits and instrumentalities of violations of Title 21, United States Code, Section 846, in any form wherever that they may be stored or found including, but not limited to:

(a) documents, information or records relating to the prescribing of controlled substances, including but not limited to blank or completed prescriptions, Controlled Substance Information reports and appointment books;

(b) patient records, lists and files and related identifying information for customers who have received prescriptions for controlled substances;

(c) billing and payment records, including but not limited to receipts of payments, checks, checkbooks, credit card records, invoices, shipping documentation, insurance records, ATM records, deposit and withdrawal records, bank statements, tax records, bills, cash receipt books, bookkeeping ledgers for patients/customers who have received prescriptions for controlled substances;

(d) any United States currency which has been paid or given by customers to JACOBSON or any employee or contractor at the SUBJECT OFFICE to secure an appointment or to secure a prescription for a controlled substance.

(e) financial books and records and documents constituting, concerning, or relating to payments made for controlled substance prescriptions;

(f) records concerning use or disposition of cash proceeds obtained for the prescription of controlled substances, including, but not limited to bank account records, credit card records; money market accounts, checking accounts, investment accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds or bond funds;

(g) contracts, agreements, logs, lists or papers affiliated with any medical professional services rendered at the SUBJECT PREMISES;

(h) All records files and resumes of employees, contractors or other medical personnel working for or seeking work at the SUBJECT OFFICE, including, but not limited to, any handwritten or computer files listing names addresses, telephone numbers and background information for any and all current and former employees, contractors or other medical personnel working for or seeking work at the SUBJECT PREMISES or for JACOBSON;

(i) documents demonstrating the rental or ownership of SUBJECT OFFICE; and

(j) computers, central processing units, external and internal drives, external and internal digital storage equipment or media, computer software, computerized digital data storage devices, including data stored on hard disks, floppy disks, or CD/DVD Disks,

computerized printouts or computer programs, computer or data processing software or data, and any other items which could contain or be used to transmit or store any digital records, documents, and materials described above.

2. Agents searching for the items described above are authorized to search any computers or digital media at the SUBJECT OFFICE and to copy all data stored on such computer(s) or media in order to extract and examine the above-described information. If the files and records described in this attachment cannot be read and understood without the software or programs that created those files or records, agents are authorized to seize such software and any documentation and manuals that describe the software and give instructions on its installation and use. Agents are authorized to seize such software and any documentation and manuals that describe the software and give instructions on its installation and use. Agents are authorized to make complete images of computer drives and digital storage media for later analysis or to seize such computer and remove it to a laboratory setting for a sufficient period of time to obtain access to, search for, and recover the files and records described above.

3. Agents are directed to copy or digitally scan any seized patient medical records within thirty days of the seizure and provide a copy of these patient medical records to the defendant JACOBSON or an authorized representative. Should an individual patient need access to a medical file during the copying period, the

patient may contact a member of the investigative team during business hours. Upon the submission of a valid patient release form to a member of the investigative team, the patient will be provided a copy of the medical file within 72 hours. In the event of an emergency, the treating facility or physician may contact a member of the investigative team to obtain a copy of the patient's medical file as soon as practicable. At the execution of the search warrant, agents are directed to post a notice on the door of the SUBJECT OFFICE that will allow patients to contact members of the investigative team to obtain patient files as described above.

4. Within thirty days of the seizure of any data contained within a computer, hard drive or digital media, agents are directed to provide a copy of the seized data to defendant JACOBSON or an authorized representative. At the execution of the search warrant, agents are directed to provide a telephone number to defendant JACOBSON to contact members of the investigative team regarding securing a copy of seized digital data.

All of the above described items constituting evidence, fruits or instrumentalities of violations of Title 21, United States Code, Section 846.

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F.#2011R0_____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MS 11 1175

UNITED STATES OF AMERICA

TO BE FILED UNDER SEAL

- against -

AFFIDAVIT IN SUPPORT OF
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OF AN OFFICE BUILDING LOCATED AT 277
NORTHERN BOULEVARD, GREAT NECK, NEW
YORK.

(18 U.S.C. §§ 1956 and
1957 and 21 U.S.C. §§
841(a)(1) and 846)

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EASTERN DISTRICT OF NEW YORK, SS:

SABRINA CONWELL, being duly sworn, deposes and says
that she is a Special Agent for the Drug Enforcement
Administration ("DEA"), duly appointed and acting as such.

Upon information and belief, there is probable cause to
believe that there is kept and concealed within THE PREMISES
KNOWN AND DESCRIBED AS THE MEDICAL OFFICE OF DR. ERIC JACOBSON
LOCATED AT SUITE 309 IN THE NORTHWEST CORNER OF THE THIRD-FLOOR
OF AN OFFICE BUILDING LOCATED AT 277 NORTHERN BOULEVARD, GREAT
NECK, NEW YORK (the "SUBJECT OFFICE"), the items described in
Attachment A to this affidavit, all of which constitute evidence,
fruits or instrumentalities of violations of Title 18, United
States Code, Sections 1956 and 1957, and Title 21, United States
Code, Sections 841(a)(1) and 846.

The source of my information and the grounds for my

belief are as follows:¹

1. I have been a Special Agent with the Drug Enforcement Administration ("DEA") for more than 6 years. I am currently assigned to the Long Island District Office. During my tenure with the DEA, I have participated in numerous narcotics investigations, including investigations of the diversion of legally manufactured controlled substances into the illicit market. I have had experience investigating cases in which Schedule II controlled substances have been purchased from complicit doctors and used by abusers of those substances and sold or traded to other abusers.

2. I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents, my training and experience, and discussions I have had with other law enforcement personnel concerning the investigation described herein. Additionally, statements attributable to individuals herein are set forth in sum and substance and in part.

INTRODUCTION

3. Among other duties I am participating in an investigation of Doctor Eric Jacobson ("Jacobson"), a medical

¹ Because the purpose of this Affidavit is to set forth only those facts necessary to establish probable cause to search, I have not set forth all of the facts and circumstances of which I am aware.

doctor who specializes in pain management, based upon improper prescriptions of Oxycodone in exchange for cash payments.

4. This affidavit is in support of an application to search the SUBJECT OFFICE. For the reasons set forth below, I believe there is probable cause to believe that records and other information are contained within the SUBJECT OFFICE that is evidence, fruits or instrumentalities of violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Sections 841(a)(1) and 846. The items to be searched for and seized are specifically described in Attachment A to this affidavit which is incorporated herein.

THE SUBJECT OFFICE

5. The SUBJECT OFFICE is a medical business located in Suite 309, located in the Northwest corner of the third-floor of an office building located at 277 Northern Boulevard, Great Neck, New York. The entrance to this suite is a wood door on the third floor to the left of a metal sign which reads "309" and "Eric Jacobson, M.D." Inside the entrance door to the suite is a reception area and behind the reception area are offices. Photographs of the SUBJECT OFFICE are attached as Attachment B.

THE DISTRIBUTION OF CONTROLLED SUBSTANCES

6. The Controlled Substances Act, 21 U.S.C. §§ 801 et seq., and regulations promulgated thereunder classify controlled substances in five schedules. Schedule I drugs, including, for

example, heroin and LSD, do not have an acceptable medical use in the United States. Schedule II through Schedule V drugs have acceptable medical uses. Substances in Schedule II, including, for example, Oxycodone (see below), have a high abuse potential. Substances in Schedule III, including, for example, Vicodin, have an abuse potential less than those in Schedule II, but more than Schedule IV controlled substances, and so forth. Schedule V drugs consist primarily of preparations containing limited quantities of certain narcotics and stimulant drugs.

7. The Controlled Substances Act Scheduling System is supplemented by the individual states according to local needs and conditions. In New York State, a physician must prescribe Schedule II drugs on an official New York State prescription. Information concerning transactions involving Schedule II drugs is transmitted to state authorities via computer, when the drugs are dispensed by a pharmacist.

8. Pursuant to 21 C.F.R. § 1306.21(a), a controlled substance listed in Schedules III, IV or V that is a prescription drug as determined under the Food, Drug & Cosmetics Act, 21 U.S.C. §§ 301, et seq., may be dispensed only if prescribed by an authorized practitioner.

9. Pharmacies in New York State are required to maintain physical copies of any prescriptions for five years, while federal law mandates that prescriptions be kept for at

least two years. Typically, pharmacies maintain these hard copies in a separate controlled substance prescription file. Additionally, Schedule II controlled substance prescriptions are reported electronically to New York State Bureau of Controlled Substances. Moreover, the disclosure of prescription records which would be caused by the execution of a search warrant is not prohibited by the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, which permit the disclosure of medical records pursuant to a court-ordered warrant. See 45 C.F.R. § 164.512(f)(1)(ii)(A).

10. Oxycodone hydrochloride ("Oxycodone"), a Schedule II narcotic drug, is an synthetic opioid analgesic medication generally prescribed for the relief of moderate to severe pain. Oxycodone is currently available in time-release oral pill formulation, in strengths from 10 to 160 milligrams. Oxycodone has a serious potential for abuse. Drug abusers crush the protective coating on the pill and, snort, ingest or inject it, thereby obtaining all twelve hours of the drug at one time. Oxycodone used in this fashion produces a heroin-like euphoria. Oxycodone is a highly addictive drug.

BACKGROUND OF THE INVESTIGATION

11. I have been involved in numerous investigations involving a practice known as "doctor shopping." In a typical doctor shopping scheme, an individual visits one or more doctors

and obtains multiple prescriptions for a controlled substance such as Oxycodone. In the case of complicit doctors, the individual may be prescribed medication despite awareness by the doctor that the patient is also receiving controlled substance prescriptions from other doctors and drug testing indicating that the patient is not even using the controlled substances prescribed, i.e., the patient is reselling the pills. The individual will then have the prescriptions filled at numerous different pharmacies, some of which may be complicit as well, so as to avoid detection. In addition, the individual may pay cash to have the prescription filled so as to avoid detection by an insurance company.

12. Agents are currently investigating Dr. Eric Jacobson ("Jacobson"), who operates a number of medical offices, including the SUBJECT OFFICE. As set forth below, the investigation to date has revealed that Jacobson uses the SUBJECT OFFICE on Tuesdays and Thursdays for approximately ninety percent cash purchases of prescriptions by patients. These prescriptions are nearly all for large quantities of Oxycodone. Prescription records show that the number of pills prescribed for many of these patients by Jacobson is excessive and that Jacobson prescribes Oxycodone despite awareness that patients are doctor shopping for multiple prescriptions and/or not actually using Oxycodone themselves. The investigation has shown that on an

average Tuesday or Thursday, Jacobson takes in approximately between \$12,000 to \$20,000 cash, depositing only a portion of these proceeds, and is believed to be concealing the remaining cash proceeds.

PROBABLE CAUSE TO SEARCH THE SUBJECT OFFICE

13. As set forth specifically below, agents have interviewed confidential sources, including an office manager, physician assistant and psychologist who worked for Jacobson at the SUBJECT OFFICE, each of whom left Jacobson's employment after coming to the realization that in exchange for cash, Jacobson was knowingly prescribing large volumes of Oxycodone pills to drug abusers and/or persons who are selling, rather than taking the medication. Moreover, as also set forth below, the information provided by the confidential sources, each of whom's identity is known to the United States Attorney, has proven to be reliable in that the information they have provided to law enforcement officials has been corroborated by ongoing independent investigation, including prescription records and surveillance by agents.

14. According to confidential sources, Jacobson works at the SUBJECT OFFICE in Great Neck on Tuesdays and Thursdays from approximately 8:30 a.m. until approximately 8:30 p.m. Jacobson also comes to the SUBJECT OFFICE in the late afternoon on Friday for a couple of hours. Jacobson works at his other

office locations in Kew Gardens, New York, and in the Bronx, New York, the rest of the week.

15. Approximately 100-120 patients seen each Tuesday and Thursday at the Great Neck office, approximately 24 are seen by Jacobson personally, and the remainder are seen by two physician's assistants² ("P.A.'s") at the SUBJECT OFFICE. All of the prescriptions issued at the SUBJECT OFFICE, however, are issued in Jacobson's name, even when handed out by the P.A.'s. Jacobson prepares and signs all of the prescriptions one to two days before the patients' visits, i.e., before the patient is examined.

Confidential Source #1

16. Confidential Source #1 ("CS#1") worked for Jacobson for approximately one year from approximately April 2011 to October 2011 at the SUBJECT OFFICE and at a prior medical office located in Floral Park, New York from approximately October 2010 to April 2011. CS#1 came forward to speak with agents because he/she became alarmed and believed that numerous patients were receiving prescriptions for Oxycodone who did not appear to be in pain, but rather appeared to be abusing and/or selling the Oxycodone pills they received.

² Under New York State Public Health Law, physician assistants are authorized to prescribe Schedule II controlled substances in an outpatient setting, however, physician assistants also must be authorized by the DEA to prescribe controlled substances.

17. According to CS#1, whose duties included receiving payments from patients, approximately 90 percent of patients at the SUBJECT OFFICE pay in cash. CS#1 stated that the SUBJECT OFFICE is the only office that utilizes cash as the main source of payment for the patients. CS#1 stated that the patients that visit Jacobson's offices in the Bronx and Kew Gardens, New York, generally pay via credit card or insurance. According to CS#1, Jacobson also previously directed all of the cash paying patients from the Bronx office to the SUBJECT OFFICE.

18. In addition to the large number of cash paying patients, CS#1 also described how the large cash fees charged to patients appeared to be in exchange for securing controlled substance prescriptions, rather than medical care. For example, patients are charged an initial \$350 fee, and a subsequent \$150 fee for each visit to the SUBJECT OFFICE. The fee for obtaining a new prescription after one is lost or stolen is \$500. The fee for making a last minute appointment is \$80. On average, CS#1 estimated that each patient paid \$200 in cash for their respective visits. CS#1 indicated that Jacobson generally collects \$12,000 to \$20,000 in cash for each Tuesday and each Thursday at the SUBJECT OFFICE. CS#1 indicated that the following day, Jacobson's wife generally deposits some of the money into bank accounts for Jacobson. CS#1 stated that Jacobson stated he keeps some of the money at his residence in case he

ever has to shut down.

19. According to CS#1, all fees are collected by the person who works at the front desk at the SUBJECT OFFICE and placed into an envelope prior to the patients seeing either Jacobson or the P.A.'s. The fees are recorded in a book kept at the reception desk of the SUBJECT OFFICE. CS#1 stated that after approximately \$1,000 cash was collected, the money was sealed in an envelope and given to Jacobson in his office located within the SUBJECT OFFICE. CS#1 added that Jacobson then placed the envelopes inside a cabinet next to his desk. At the end of the day Jacobson placed all of these envelopes inside a tan briefcase when he left the SUBJECT OFFICE.³

20. According to CS#1, one to two days prior to the patients' appointments, Jacobson prints out completed prescriptions for those upcoming patients from a computer located in the SUBJECT OFFICE. Jacobson then signs all of the prescriptions, which are photocopied and the copy is placed in each prospective patient's folder in the SUBJECT OFFICE.

21. Beginning in approximately July 2011, CS#1 became responsible for running each patient through the New York State

³ On October 6, 2011, surveillance agents observed Jacobson leave at the end of the day carrying such a briefcase and proceed to his residence, where he took this briefcase inside.

Controlled Substance Information (CSI) system⁴ prior to the patient's visit to the SUBJECT OFFICE.⁵ If the CSI report showed doctor shopping, i.e. prescriptions from multiple doctors for controlled substances in the same period, the report was placed in the patient's folder, so Jacobson was aware of it. At least ten patients per day clearly appeared to be doctor shopping. CS#1 reports that he/she confronted Jacobson regarding a number of these particular patients, pointing out to Jacobson that the CSI reports for these patients showed them receiving multiple prescriptions for controlled substances from different doctors in the same 30 day period. Prior to the recent publicity surrounding Oxycodone, including the robbery/murders in Medford, New York, in June 2011, Jacobson would generally ignore the CSI report and write new prescriptions for these patients. Following the Medford robbery/murders, Jacobson began to warn patients they could not see multiple physicians, but Jacobson generally

⁴ To combat doctor shopping, the New York State Department of Health's Bureau of Narcotic Enforcement has implemented the online Controlled Substance Information (CSI) on Dispensed Prescriptions program. This online program allows physicians holding a valid DEA registration to access the CSI to review patients' recent controlled substance prescription history at any time. Dispensers of controlled substances (i.e., pharmacies) must report monthly to the Department of Health. Information will only be provided in a CSI report if it has been reported that the patient has received controlled substance prescriptions from 2 or more prescribers and filled them at 2 or more pharmacies/dispensers during the previous calendar month.

⁵ This duty had previously been completed by an employee at Jacobson's Bronx office.

continued to provide these patients with Oxycodone prescriptions for another two to three office visits before discharging them from the practice.⁶

22. CS#1 provided two CSI reports to the DEA for patients Jane Doe #1 and #2, respectively, patients whose identities are known to the United States Attorney. CS#1 indicated that these reports had been provided to Jacobson in conjunction with visits by these patients to the SUBJECT OFFICE to obtain controlled substances. These CSI reports clearly reflect that Jane Doe #1 and #2 were doctor shopping. For example:

a. On or about July 27, 2011, CS#1 gave Jacobson a CSI report for Jane Doe #1 which showed that after Jacobson prescribed Jane Doe #1 a 30-day supply of Oxycodone on June 2, 2011, Jane Doe #1 obtained five other Oxycodone prescriptions from other doctors, totaling a 130-day supply. The CSI report then showed that after Jacobson prescribed Jane Doe #1 another 30-day supply of Oxycodone on July 1, 2011, Jane Doe #1 obtained a Oxycodone prescription from another doctor, for an additional 30-day supply. Despite being warned by CS#1 on or about July 27, 2011, prescription records show that Jane Doe #1 was nevertheless provided with a 15-day prescription for Oxycodone by Jacobson on

⁶ While Jacobson would continue to provide prescriptions to patients after being alerted to the fact that they were doctor shopping, he would often reduce the supply on the final visit.

or about July 29, 2011.

b. On or about April 9, 2011, CS#1 gave Jacobson a CSI report for Jane Doe #2 which showed that while Jacobson prescribed Jane Doe #2 a 30-day supply of Oxycodone on March 15, 2011, Jane Doe #2 obtained eight prescriptions from other doctors between March 1 and March 30, 2001 for Morphine and Tapentadol, Schedule II Controlled Substances, as well as Codeine and Hydrocodone, Schedule III Controlled Substances. Despite being warned by CS#1, prescription records show that on April 9, 2011, Jacobson nevertheless provided Jane Doe #2 with a prescription for a 30-day supply of Oxycodone (240 - 30 mg pills). Jane Doe #2 filled this prescription on April 9, 2011 and was found unresponsive the next day, April 10, 2011, after an apparent overdose. Jane Doe #2 tested positive for cocaine at the hospital and remained in a coma. Jane Doe #2 was declared dead on April 27, 2011. An autopsy determined she died of chronic substance abuse.

23. CS#1 stated that in approximately August 2011, Jacobson began drug testing his patients with an oral swab. According to CS#1, the drug test provided information whether or not the patient is taking opioids -- including Oxycodone -- as well as cocaine. This testing showed a significant number of patients who failed the drug test (i.e., they were not using Oxycodone as prescribed by the doctor) and tested positive for

cocaine. However, similar to patients who were believed to be doctor shopping, Jacobson would give these patients multiple warnings that they had to take the pills prescribed, but still continued to provide them with prescriptions, prior to any discharge from the practice. CS#1 indicated that he/she confronted Jacobson about continuing to provide Oxycodone pills to these patients, telling him that these patients appeared to be selling their pills because their CSI reports showed doctor shopping and the drug testing showed they were not even using Oxycodone. Jacobson told CS#1 not to worry and that as long as it was not happening under Jacobson's nose, it was not his responsibility.

24. During interviews, CS#1 informed agents that Jane Doe #3, whose identity is known to the United States Attorney, a patient at the SUBJECT OFFICES was believed to be obtaining pills despite no apparent medical need. Seeking to confirm CS#1's account, on or about September 20, 2011, an agent observed Jane Doe #3, who is approximately in her early 20's, exit the SUBJECT OFFICE holding a prescription. Jane Doe #3 met two friends who had been waiting for her outside the building and the three left together in the same vehicle. Agents attempted to surreptitiously follow Jane Doe #3 for a period of time, however, Jane Doe #3 and her associates appeared to spot the surveillance and agents then interviewed Jane Doe #3. Jane Doe #3 stated that

she had been bitten by a dog seven years ago and needed her Oxycodone and Xanax for the pain and anxiety, respectively. Although Jane Doe #3 denied selling her pills, I am aware that on March 4, 2011, a confidential source working under the supervision of the Suffolk County Police Department bought more than twenty-five Oxycodone 30 mg pills from Jane Doe #3 at her residence. Moreover, based upon prescription records kept by the New York State Department of Controlled Substances, Jane Doe #3 received a prescription for Oxycodone from Jacobson one day prior, on March 3, 2011, which she filled the same day, receiving 120 Oxycodone 30 mg pills.

25. According to CS#1, a number of the pharmacies near the SUBJECT OFFICE refused to fill prescriptions for Jacobson's patients. CS#1 stated that Jacobson instructed his staff to tell patients to fill their prescriptions at a particular pharmacy located in Syosset, New York, approximately one-half hour away. According to records of the pharmaceutical distributor providing 30 mg Oxycodone pills to this pharmacy, Jacobson is the highest prescriber of Oxycodone for this pharmacy and that the pharmacy has a very high volume of cash purchases (as opposed to insurance) for Oxycodone. Based on my observations, there are many pharmacies closer to the SUBJECT OFFICE which could provide Oxycodone.

26. CS#1 stated that prior to using the SUBJECT OFFICE

in April 2011, Jacobson maintained an office to provide predominantly Oxycodone prescriptions in Floral Park, New York. From approximately October 2010 to January 2011, despite a lack of training or licensing, Jacobson had CS#1 meet with patients at the Floral Park office, administer a pain questionnaire and hand out prescriptions previously completed by Jacobson and placed in the patients' files. In approximately January 2011, a P.A. was hired to fulfill these duties. In or about April 2011, after receiving complaints from the community of suspected drug dealing occurring in the vicinity of Jacobson's Floral Park office, Floral Park Police Officers confronted Jacobson at his office during business hours. Following this confrontation, Jacobson abandoned the Floral Park medical office and re-opened at the SUBJECT OFFICE within a week.

27. According to CS#1, in or about October 2011, Jacobson hired a psychologist to work in the SUBJECT OFFICE. Jacobson mandated that all of the patients see the psychologist. The cost to see the Psychologist was \$150 for the initial visit and \$75 for a subsequent visit, all of which was paid to Jacobson. CS#1 stated that the patients met with the psychologist for approximately 15 minutes each. According to CS#1, the psychologist quit after a short period.

Confidential Source #2

28. On November 28, 2011, agents located and spoke to

Confidential Source #2 ("CS#2"), the psychologist described in the preceding paragraph. CS#2 stated that he/she worked for Jacobson at the SUBJECT OFFICE for approximately four weeks from September to October 2011. CS#2 received his/her license to practice in April 2010 and answered an advertisement placed by Jacobson. CS#2 stated that he/she was hired by Jacobson for the stated purpose of conducting psychological interviews to make sure patients were psychologically functioning under their pain management medications. CS#2 stated that he/she never wrote any reports for Jacobson because he/she soon realized that Jacobson was over-prescribing Oxycodone and that although a pain management doctor, Jacobson was also prescribing anti-anxiety medication in addition to Oxycodone. CS#2 indicated when CS#2 quit in October 2011, CS#2 texted Jacobson saying "You are running an illegal practice and I don't want any part of it, so I am not returning to work." Jacobson replied requesting that CS#2 send him the reports. CS#2 indicated that based upon his/her training, experience, interaction with Jacobson and knowledge of the practice, Jacobson was seeking to use the psychological reports to cover-up the illicit prescription activity.

Confidential Source #3

29. I have also interviewed Confidential Source #3 ("CS#3"), who worked as a physician's assistant for Jacobson from April 2011 to November 2011 at the SUBJECT OFFICE. According to

CS#3, between 100 and 120 patients are seen at the SUBJECT OFFICE every Tuesday and Thursday. CS#3 stated he/she had conversations with JACOBSON about how it was difficult to examine so many patients in just a single day. CS#3 stated that JACOBSON made a lot of money every Tuesday and Thursday at the SUBJECT OFFICE because 95% of the patients pay for their visit in cash. CS#3 said that he/she thought it was very odd that so many patients paid in cash, but never thought anything of it. CS#3 said that if a patient looked like they are not using the pain medication properly that CS#3 reported this to JACOBSON. CS#3 stated that he/she was, at times, very uncomfortable with providing prescriptions to some of the patients he/she saw during the day. CS#3 said that some patients looked as if they were not using the medication and generally did not act as if they are in legitimate pain. CS#3 added that he/she resigned from his/her position as a P.A. with Jacobson in early November 2011.

30. According to CS#3, if he/she opened up a file and found a CSI report inside indicative of doctor shopping, he/she would take the file to Jacobson. Jacobson instructed CS#3 to give a warning and nevertheless give the Oxycodone prescription. CS#3 described -- similar to CS#1 -- that patients would receive multiple warnings and multiple Oxycodone prescriptions before eventually being discharged. Moreover, upon discharge, Jacobson still prescribed one-half the usual Oxycodone prescription to

these patients.

31. As of November 22, 2011, surveillance by the DEA, as well as a visit to the SUBJECT OFFICE by another confidential source ("CS#4"), whose identity is known to the United States Attorney, the SUBJECT OFFICE still appears to be used by individuals seeking controlled substance prescriptions, based upon large volumes of patients crowding the waiting room of the SUBJECT OFFICE.

PROCEDURE FOR PHOTOCOPYING AND RETURNING PATIENT FILES

32. It is the government's intention to implement the following procedures with regard to any medical records seized during the course of the execution of the requested search warrant. Every attempt will be made to photocopy or digitally scan any seized medical records within thirty days of the seizure (if this turns out to be impractical, we will notify the Court and seek an extension of time). After the files are copied or digitally scanned, copies of the medical records will be provided to Jacobson. During the 30-day period allowed to copy the medical records, if Jacobson needs a particular patient's record, an authorized representative of Jacobson may contact a member of the investigative team during business hours to obtain a copy of the medical record within 48 hours of the request. Should an individual patient need access to a medical file during the copying period, the patient may contact a member of the

investigative team during business hours. Upon the submission of a valid patient release form to a member of the investigative team, the patient will be provided a copy of the medical file within 48 hours. In the event of an emergency, the treating facility or physician may contact a member of the investigative team to obtain a copy of the patient's medical file as soon as practicable. At the execution of the search warrant, agents will provide a telephone number to Jacobson and post a notice on the door of the SUBJECT OFFICE that will allow both Jacobson and patients to contact members of the investigative team regarding patient files.

SPECIFICS REGARDING THE SEIZURE AND SEARCHING OF COMPUTER SYSTEMS

33. Based on my own experience and consultation with other law enforcement agents and detectives who have been involved in the search of computers and retrieval of data from computer systems and related peripherals, and computer media, there are several reasons why a complete search and seizure of information from computers often requires seizure of all electronic storage devices, as well as all related peripherals, to permit a thorough search later by qualified computer experts in a laboratory or other controlled environment:

- a. Computer storage devices, such as hard disks, diskettes, tapes, laser disks, and other digital storage mediums, can store the equivalent of hundreds of thousands of pages of information. Additionally, when an individual seeks to conceal information that

may constitute criminal evidence, that individual may store the information in random order with deceptive file names. As a result, it may be necessary for law enforcement authorities performing a search to examine all the stored data to determine which particular files are evidence or instrumentalities of criminal activity. This review and sorting process can take weeks or months, depending on the volume of data stored, and would be impossible to complete during a search on site; and

- b. Searching computer systems for criminal evidence is a highly technical process, requiring expert skill and a properly controlled environment. The vast array of computer hardware and software available requires even those who are computer experts to specialize in some systems and applications. It is difficult to know before a search what type of hardware and software are present and therefore which experts will be required to analyze the subject system and its data. In any event, data search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password-protected, or encrypted files. Since computer evidence is extremely vulnerable to inadvertent or intentional modification or destruction (both from external sources or from destructive code imbedded in the system as a booby trap), a controlled environment is essential to its complete and accurate analysis.

34. Based on my own experience and my consultation with other law enforcement agents and detectives who have been involved in computer searches, searching computerized information for evidence or instrumentalities of a crime often requires the seizure of all of a computer system's input and output peripheral devices, related software, documentation, and data security

devices (including passwords) so that a qualified computer expert can accurately retrieve the system's data in a laboratory or other controlled environment. There are several reasons that compel this conclusion:

- a. The peripheral devices that allow users to enter or retrieve data from the storage devices vary widely in their compatibility with other hardware and software. Many system storage devices require particular input/output devices in order to read the data on the system. It is important that the analyst be able to properly re-configure the system as it now operates in order to accurately retrieve the evidence listed above. In addition, the analyst needs the relevant system software (operating systems, interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media), as well as all related instruction manuals or other documentation and data security devices; and
- b. In order to fully retrieve data from a computer system, the analyst also needs all magnetic storage devices, as well as the central processing unit ("CPU"). In cases like the instant one where the evidence consists partly of image files, the monitor and printer are also essential to show the nature and quality of the graphic images which the system could produce. Further, the analyst again needs all the system software (operating systems or interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media) for proper data retrieval.
- c. I am familiar with and understand the implications of the Privacy Protection Act ("PPA"), 42 U.S.C. § 2000aa, and the role of this statute in protecting First Amendment activities. I am not aware that any of the

materials to be searched and seized from the SUBJECT OFFICE are protected materials pursuant to the PPA. If any such protected materials are inadvertently seized, all efforts will be made to return these materials to their authors as quickly as possible.

35. In addition to being evidence of a crime, in cases of this sort, there is probable cause to believe that the computer and its storage devices, modem, router, and other system components were used as a means of committing offense and should be seized on that basis alone. Accordingly, permission is sought herein to seize and search all computers and all related devices consistent with the scope of the requested search, as set forth in Attachments A and B, respectively.

36. It is the government's intention to implement a procedure for data seized from digital and computer media. Every attempt will be made to copy the data from any hard drives and digital media seized within thirty days of the seizure (if impractical, we will notify the Court and seek additional time). After the data is copied and verified, a copy will be provided to Jacobson. Unlike physical records, however, digital data cannot be provided until it has been copied, without altering the original data. At the execution of the search warrant, agents will provide a telephone number to Jacobson to contact members of the investigative team regarding securing a copy of seized digital data.

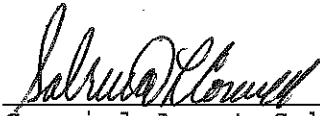
REQUEST TO SEARCH

37. Based upon the facts set forth above, there is probable cause to believe that the items listed on Attachment A hereto, which is incorporated herein by reference, will be found at the SUBJECT OFFICE, and that those items constitute evidence, fruits or instrumentalities of violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Sections 841(a)(1) and 846.

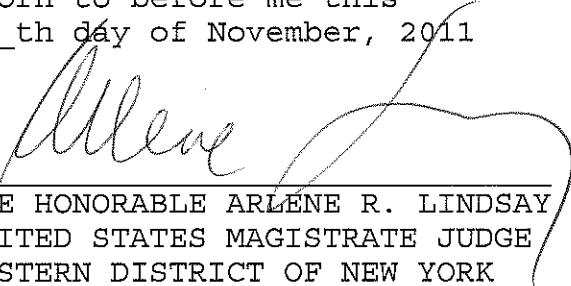
38. It is further requested that this Affidavit be sealed by the Court until such time as the Court directs otherwise. Given the confidential nature of this investigation, disclosure would severely jeopardize the investigation in that it might alert the target(s) of the investigation at the SUBJECT OFFICE to the specific nature of the investigation, sources of information and likely lead to the destruction and concealment of evidence, witness tampering and/or flight.

WHEREFORE, your affiant respectfully requests that a warrant be issued authorizing DEA agents, with such other assistance as may be necessary, to search the SUBJECT OFFICE and seize the items listed in Attachment A to this affidavit, which is incorporated by reference as if fully set forth herein, all of which constitute evidence, fruits or instrumentalities of

violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Sections 841(a)(1) and 846.


Special Agent Sabrina Conwell
Drug Enforcement Administration

Sworn to before me this
20th day of November, 2011


THE HONORABLE ARLENE R. LINDSAY
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

ATTACHMENT A

ITEMS TO BE SEIZED - THE SUBJECT OFFICE

1. Any and all records, data and correspondence constituting evidence, fruits and instrumentalities of violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Section 841(a)(1), in any form wherever that they may be stored or found including, but not limited to:

(a) documents, information or records relating to the prescribing of controlled substances, including but not limited to blank or completed prescriptions, Controlled Substance Information reports and appointment books;

(b) patient records, lists and files and related identifying information for customers who have received prescriptions for controlled substances;

(c) billing and payment records, including but not limited to receipts of payments, checks, checkbooks, credit card records, invoices, shipping documentation, insurance records, ATM records, deposit and withdrawal records, bank statements, tax records, bills, cash receipt books, bookkeeping ledgers for patients/customers who have received prescriptions for controlled substances;

(d) any United States currency which has been paid or given by customers to Dr. Jacobson or any employee or contractor at the SUBJECT OFFICE to secure an appointment or to secure a prescription for a controlled substance.

(e) financial books and records and documents constituting, concerning, or relating to payments made for controlled substance prescriptions;

(f) records concerning use or disposition of cash proceeds obtained for the prescription of controlled substances, including, but not limited to bank account records, credit card records; money market accounts, checking accounts, investment accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds or bond funds;

(g) contracts, agreements, logs, lists or papers affiliated with any medical professional services rendered at the SUBJECT PREMISES;

(h) All records files and resumes of employees, contractors or other medical personnel working for or seeking work at the SUBJECT OFFICE, including, but not limited to, any handwritten or computer files listing names addresses, telephone numbers and background information for any and all current and former employees, contractors or

other medical personnel working for or seeking work at the SUBJECT PREMISES or for Dr. Jacobson;

(i) documents demonstrating the rental or ownership of SUBJECT OFFICE; and

(j) computers, central processing units, external and internal drives, external and internal digital storage equipment or media, computer software, computerized digital data storage devices, including data stored on hard disks, floppy disks, or CD/DVD Disks, computerized printouts or computer programs, computer or data processing software or data, and any other items which could contain or be used to transmit or store any digital records, documents, and materials described above.

2. Agents searching for the items described above are authorized to search any computers or digital media at the SUBJECT OFFICE and to copy all data stored on such computer(s) or media in order to extract and examine the above-described information. If the files and records described in this attachment cannot be read and understood without the software or programs that created those files or records, agents are authorized to seize such software and any documentation and manuals that describe the software and give instructions on its installation and use. Agents are authorized to seize such software and any documentation and manuals that describe the software and give instructions on its installation and use. Agents are authorized to make complete images of computer drives and digital storage media for later analysis or to seize such computer and remove it to a laboratory setting for a sufficient period of time to obtain access to, search for, and recover the files and records described above.

3. Agents are directed to copy or digitally scan any seized patient medical records within thirty days of the seizure and provide a copy of these patient medical records to Dr. Eric Jacobson or an authorized representative. During the 30-day period allowed to copy the medical records, if Dr. Jacobson needs a particular patient's record, an authorized representative of Jacobson may contact a member of the investigative team during business hours to obtain a copy of the medical record within 48 hours of the request. Should an individual patient need access to a medical file during the copying period, the patient may contact a member of the investigative team during business hours. Upon the submission of a valid patient release form to a member of the investigative team, the patient will be provided a copy of the medical file within 48 hours. In the event of an emergency, the treating facility or physician may contact a member of the investigative team to obtain a copy of the patient's medical file

as soon as practicable. At the execution of the search warrant, agents are directed to post a notice on the door of the SUBJECT OFFICE that will allow both Dr. Jacobson and patients to contact members of the investigative team to obtain patient files as described above.

4. Within thirty days of the seizure of any data contained within a computer, hard drive or digital media, agents are directed to provide a copy of the seized data to Dr. Jacobson or an authorized representative. At the execution of the search warrant, agents are directed to provide a telephone number to Dr. Jacobson to contact members of the investigative team regarding securing a copy of seized digital data.

All of the above described items constituting evidence, fruits or instrumentalities of violations of Title 18, United States Code, Sections 1956 and 1957, and Title 21, United States Code, Section 841(a)(1).